



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 175657

PRELIMINARY RECITALS

Pursuant to a petition filed on July 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 17, 2016, by telephone.

The issue for determination is whether the county agency correctly determined that the petitioner is ineligible for institutional medical assistance because his assets exceed the program's limit.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Barron County Department of Human Services
Courthouse Room 338
335 E Monroe Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The petitioner was in a nursing home until July 5, 2016. While he was in a nursing home, his wife lived in the community.
3. The petitioner and his wife had assets totaling \$207,638.56 when he began his nursing home stay. This included a land contract valued at \$112,258.34.
4. By July 2016, the petitioner and his wife reduced their assets to \$188,216.58, including the land contract, then valued at \$109,674.65.

DISCUSSION

The petitioner seeks medical assistance to cover an extended stay in a nursing home that ended on July 5, 2016. Usually, a person cannot be eligible for institutional medical assistance if his available assets exceed \$2,000. See Wis. Stat. § 49.47(4)(b)3g.e. But the program has spousal impoverishment provisions that allow a higher asset limit for a married person whose spouse still lives in the community. The asset limit allowed by these provisions, which are meant to keep medical expenses from bankrupting the spouse living in the community, increases as a couple's assets increase. See Wis. Stat. § 49.455.

The provisions exempt the first \$50,000 of a couple's assets by allowing the spouse in the nursing home assign that amount of assets to the spouse in the community. Couples with between \$50,000 and \$100,000 may also assign \$50,000 of their assets to the spouse in the community, those with between \$100,000 and \$238,440 may assign half of their assets, and those with over \$238,440, may assign \$119,220. Wis. Stat. § 49.455(6)(b); *Medicaid Eligibility Handbook*, § 18.4.3.

The total assets are based on the amount the couple had at the beginning of the first continuous period of institutionalization lasting at least 30 days. Wis. Stat. § 49.455(5)(a)2. *Medicaid Eligibility Handbook*, § 18.4.2. To reach the medical assistance limit, the recipient must spend the unassigned portion of the couple's assets down. The actual amount that a couple can keep is \$2,000 above the assigned amount because the spouse in the nursing home still can keep that amount of assets for himself. Thus, for example, a applicant whose household has \$52,000 in assets would immediately be eligible, while a couple with \$200,000 in assets would not be eligible until it spent down \$98,000, which is half of those assets minus the \$2,000 the institutionalized spouse could keep.

The county agency denied the petitioner's application for medical assistance after determining that he and his wife had assets totaling \$207,638.56 when he began his nursing home stay and that those assets were still \$188,216.58 when he sought medical assistance in July 2016. These assets include a land contract that was valued at \$112,258.34 when he entered the nursing home and \$109,674.65 in July 2016. He contends that counting the land contract is unjust and that their medical bills should count against the asset limit.

Administrative law judges have no equitable powers that allow them to consider the justness of situation. No law exempts the petitioner's land contract. But even it were exempt, his and his wife's assets would still be \$78,544.92, which exceeds \$52,000 and would leave him ineligible. As for the debts, the law does not allow them to be subtracted against assets, and the Division of Hearings and Appeals has never permitted this. Thus, based upon the evidence before me, I must uphold the agency's decision.

CONCLUSIONS OF LAW

The department correctly denied institutional medical assistance benefits to the petitioner because his assets exceed the program's limit.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of September, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2016.

Barron County Department of Human Services
Division of Health Care Access and Accountability